

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

THE HONORABLE JAMES V. SELNA, JUDGE PRESIDING

IN RE STEC, INC., SECURITIES  
LITIGATION

SACV-09-1304-JVS  
SACV-09-1306-JVS  
SACV-09-1315-JVS  
SACV-09-1320-JVS  
SACV-09-1460-JVS  
CV-09-8536-JVS

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Santa Ana, California

November 9, 2012

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United States Courthouse  
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1 SANTA ANA, CALIFORNIA; FRIDAY, NOVEMBER 9, 2012; 10:00 A.M.

2 THE CLERK: Item No. 1, SACV-09-01304-JVS, In Re  
3 Stec, Inc., Securities Litigation and all consolidated  
4 actions.

5 Counsel, please state your appearances for the  
6 record.

7 MR. DUBBS: Good morning, Your Honor. Thomas  
8 Dubbs for lead plaintiff New Jersey and the class.

9 MR. JOHNSON: Good morning, Your Honor. James  
10 Johnson also for New Jersey and the class.

11 MR. GREENBERG: Good morning, Your Honor. Bruce  
12 Greenberg on behalf of New Jersey and the class.

13 MR. GREEN: Good morning, Your Honor. Robert  
14 Green for Mark Ripperda and the Section 11 plaintiffs.

15 MR. BIENERT: Good morning, Your Honor. Tom  
16 Bienert for plaintiff Mark Ripperda.

17 MR. GIBBS: Good morning, Your Honor. Patrick  
18 Gibbs for the defendants.

19 MR. GALDSTON: Good morning, Your Honor. Benjamin  
20 Galdston on behalf of the West Virginia Laborers.

21 MR. NICHOLAS: Good morning, Your Honor. Blair  
22 Nicholas on behalf of the West Virginia Laborers.

23 THE COURT: Good morning.

24 Let me provide you with a few additional thoughts  
25 before I hear you. My concern about the transaction and the

1 causation not being reflected in the current pleading with  
2 respect to Mr. Ripperda's loss I think could be easily  
3 cured. I am prepared to grant leave to file an Amended  
4 Complaint. I am prepared to not require an answer unless  
5 the defendants want to file an answer, just let the current  
6 answer stand, and all material allegations deemed denied.

7 That's not my real concern. My concern is I don't  
8 think I have a sufficient record with respect to the  
9 settlement as it affects the 33 Act claimants. I don't  
10 think I have a sufficient record with regard to the  
11 qualifications of counsel, the legitimacy of the 25 percent  
12 premium for the 33 Act claimants, and generally I just don't  
13 have an understanding of how that aspect of the settlement  
14 negotiations played out to give me comfort that it is in  
15 fact fair to the 33 Act plaintiffs.

16 I acknowledge that there is a substantial amount  
17 of money on the table, and I think that further  
18 concentration on the typicality and adequacy of  
19 representation of the 33 Act plaintiffs can probably be  
20 cured, but I[m just not satisfied with the present record.

21 MR. DUBBS: Your Honor, Thomas Dubbs. We have  
22 read the tentative, and I have just heard your remarks. The  
23 simple answer is we think the pleading issues can be cured  
24 in a relatively straightforward simple way. We also think  
25 that the other questions that the Court has raised, which

1       would more often be the focus of a final approval hearing,  
2       but it's perfectly appropriate to look at it now, which we  
3       are prepared to do. We think we can put before the Court  
4       and would like the opportunity to put before the Court a  
5       more fulsome record that responds in detail to all the  
6       concerns which Your Honor just raised now orally, as well as  
7       the items that were put in the tentative. We would like the  
8       opportunity to do that. We think we can do that, and we  
9       would propose to have that package to the Court in three or  
10       four weeks.

11                   THE COURT: That's perfectly acceptable. There is  
12       a serious settlement proposal on the table. I simply want  
13       to make sure that it gets vetted properly so that I can  
14       discharge my duties vis-a-vis the class members and  
15       specifically the 33 Act class members.

16                   MR. DUBBS: Let's be clear. We have absolutely no  
17       problem with doing that. That is the Court's role in these  
18       circumstances, and it's our job to satisfy the Court. We  
19       feel confident we can do that. At the very least, we want  
20       to make the best try that we can.

21                   THE COURT: Well, if I didn't have an optimistic  
22       view, I wouldn't be encouraging you to engage in this  
23       effort. I think there are answers to the questions that I  
24       posed and that they are likely to be quite satisfactory  
25       answers. The question is whether those answers are

1 currently in the record.

2 MR. DUBBS: We agree, Your Honor. We think that  
3 they are answerable, and we think the record can be  
4 supplemented to Your Honor's satisfaction, and we will  
5 endeavor to do that.

6 THE COURT: What kind of a timetable do you  
7 propose?

8 MR. DUBBS: I think in three to four weeks we can  
9 get the whole thing to Your Honor. 12/7 is a date that  
10 is -- not to jinx it on Pearl Harbor Day, but --

11 THE COURT: That's fine. Any supplemental filing  
12 by December 7. I think it would be nice to get this  
13 accomplished this year. If you can get it in on the 7th, I  
14 propose to hold a hearing on the 17th.

15 MR. DUBBS: Very good.

16 THE COURT: I will put it over to the new year if  
17 you want me to, but --

18 MR. DUBBS: No. We would just as soon keep the  
19 thing moving.

20 THE COURT: That would be my preference as well.

21 MR. DUBBS: Very well. We will do that, Your  
22 Honor.

23 MR. GALDSTON: Your Honor, on behalf of West  
24 Virginia Laborers, Vincent, and the receiver, we certainly  
25 disagree that the issues with adequacy or typicality can be

1       resolved -- we would like a sufficient opportunity to  
2       respond to any submission that is proffered by the  
3       plaintiffs.

4               THE COURT: I would still like to do this this  
5       year, but I think the West Virginia plaintiffs ought to have  
6       an adequate opportunity to respond to the showing. Can you  
7       shorten the time? Can you get it done before the 7th?  
8       Otherwise, if I give them a week or two from the date of  
9       your submission to put in their views, we are off into the  
10      new year. That's the not the end of the world, but --

11              MR. DUBBS: Why don't we confer with counsel for  
12       West Virginia. I appreciate the point. We will try to  
13       truncate the time, and hopefully they will be cooperative  
14       and try to compress their time so we can get it done as soon  
15       as possible.

16              THE COURT: I think it's appropriate that they  
17       address the Court.

18              Could I ask you then within a week to meet and  
19       confer and put in a briefing schedule leading to a hearing  
20       that you are all satisfied with? It sounds like this is  
21       going to go into the new year. I am prepared to address it  
22       promptly in the new year if that's the amount of time you  
23       need to make the record.

24              MR. DUBBS: I'm hopefully optimistic that we can  
25       do something this year, but we shall see.

1                   MR. GALDSTON: I'm happy to meet and confer with  
2 counsel and work out a schedule, but there are some concerns  
3 that I would like to highlight for the Court if I may be  
4 heard today.

5                   THE COURT: Briefly.

6                   MR. GALDSTON: Your Honor, we are just completely  
7 bewildered and puzzled about why it is that lead counsel in  
8 this case who only represents the certified Exchange Act  
9 claims made absolutely no attempt over the last two years to  
10 amend or assert the Securities Act claims that were  
11 dismissed from this case and really have made no effort to  
12 prosecute those claims in any way. We could add those  
13 securities claims back --

14                  THE COURT: Is that entirely accurate?

15                  MR. GALDSTON: That is, Your Honor.

16                  THE COURT: Didn't the current plaintiffs move for  
17 certification of both the Section 11 and the 10(b) claim,  
18 the 33 and the 34 Act claim?

19                  MR. GALDSTON: They moved to certify a claim that  
20 would encompass those claims, but they didn't have a  
21 plaintiff with standing.

22                  THE COURT: But they did assert a 33 Act claim,  
23 did they not?

24                  MR. GALDSTON: Well, Your Honor --

25                  THE COURT: Did they or did they not assert the 33

1       Act claim?

2                    MR. GALDSTON: They did not proffer a claim --

3                    THE COURT: Did they or did they not in their  
4        pleadings assert a 33 Act claim?

5                    MR. GALDSTON: In the class certification motion,  
6        Your Honor, they asserted --

7                    THE COURT: Sir, answer the question posed. In  
8        the Complaint and in the amended pleadings, did the current  
9        plaintiffs assert or not assert a 33 Act claim?

10                  MR. GALDSTON: That is correct.

11                  THE COURT: So you misspoke when you said they  
12        never asserted a 33 Act claim?

13                  MR. GALDSTON: Your Honor, I may have misspoke.  
14        Excuse me. What I meant to say is they have not amended the  
15        Complaint after dismissal of their plaintiff that did not  
16        have standing to assert those claims. They did not amend to  
17        bring in a plaintiff with standing.

18                  THE COURT: Sir, if you are going to be helpful to  
19        this Court, it would benefit both you and me to have you  
20        understand the procedural steps that have gone forward in  
21        this court. It would be helpful for you to understand the  
22        record as it establishes the effort made by the current  
23        lead plaintiff to find a 33 Act plaintiff, and it would be  
24        helpful to understand what the Court's rationale was for  
25        certifying only a 34 Act class. All those things would be

1 quite helpful.

2 MR. GALDSTON: That's correct. When Your Honor  
3 certified the Exchange Act claim, you provided counsel with  
4 an opportunity -- or least noted that there would be an  
5 opportunity to revisit a class certification order if the  
6 plaintiff was able to find a Securities Act plaintiff with  
7 standing, and they were unable to do that. So what they  
8 have done here now is modify the theory of their case to  
9 conform to the individual plaintiff that they found to suit  
10 their needs. This is nothing more than an arranged marriage  
11 of convenience.

12 We don't understand why it is that they are  
13 persistently attempting to settle claims that are currently  
14 being litigated but are represented by an institutional  
15 plaintiff with standing with experienced counsel, the exact  
16 type of class representative that Congress envisioned in the  
17 PSLRA in a federal action, a live action, that is being  
18 litigated just down the street from here. We just don't  
19 understand why they insist on attempting to settle these  
20 claims without the consent or participation of West Virginia  
21 Laborers.

22 Now, it's worth noting that West Virginia Laborers  
23 has not asserted these claims in the state court action.  
24 They likely would have expired under the limitations period  
25 because, as I pointed out, they had abandoned and not

1 amended to add a plaintiff with standing to maintain those  
2 claims.

3 Now to try to now wrestle the Securities Act  
4 claims away from West Virginia Laborers in state court by  
5 putting forth a token individual plaintiff here who has had  
6 virtually no involvement in the settlement process and  
7 apparently was only marginally involved in the allocation  
8 negotiations as between the Securities Act and the Exchange  
9 Act claims is really improper and prejudicial to West  
10 Virginia Laborers.

11 THE COURT: Sir, to the extent you have  
12 substantive comments on the proposed settlement, you will  
13 have an opportunity to respond to the supplemental showing  
14 of the current plaintiffs before me.

15 MR. GALDSTON: We will reserve our rights and our  
16 arguments with respect to the adequacy of settlement and  
17 with respect to the process by which it was derived.  
18 However, I would like to raise a few other concerns as to  
19 adequacy.

20 THE COURT: Sir, I will address your concerns as  
21 to adequacy to the extent you made them in your papers to  
22 date, and with respect to whether there is any response, I  
23 will consider your substantive arguments with regard to  
24 adequacy at that time.

25 MR. GALDSTON: Okay. We submitted a surrereply,

1 which was not accepted by the Court. There are a few points  
2 that I wish to make for the record.

3 THE COURT: Sir, you can make them in your  
4 response to the supplemental showing.

5 MR. GALDSTON: Thank you, Your Honor. We will  
6 reserve and make our arguments in the supplemental  
7 submission.

8 THE COURT: Very good. You have a due process  
9 right to make your position before this Court, and you will  
10 have an opportunity to do that.

11 MR. GALDSTON: Thank you, Your Honor.

12 THE COURT: What would have happened if you had  
13 filed your 33 Act claim in federal court?

14 MR. GALDSTON: I'm sorry?

15 THE COURT: Instead of making the choice to go to  
16 state court and you filed it in federal court, what would  
17 have happened?

18 MR. GALDSTON: Well, I imagine that the parties  
19 would have sought to consolidate it with this action.

20 THE COURT: But you made the decision to file in  
21 state court, correct?

22 MR. GALDSTON: That's correct. Our client made  
23 the decision to file in state court. It's worth noting  
24 again that Your Honor dismissed the disclosure that the  
25 plaintiffs are now trying to sneak back into this case.

1 That's a disclosure that we alleged and supported in the  
2 state court action.

3 THE COURT: Thank you.

4 MR. GALDSTON: Thank you, Your Honor.

5 THE COURT: Mr. Gibbs.

6 MR. GIBBS: Your Honor, I have nothing to add  
7 other than to note that the defendants certainly agree with  
8 an amended pleading. We would appreciate the opportunity to  
9 forego an answer as long as all material allegations are  
10 being denied, and we're happy to work with whatever schedule  
11 the respective plaintiffs' lawyers are able to work out.

12 THE COURT: Why don't you join with -- along with  
13 a stipulation that provides for a date for filing the  
14 amended pleading the option to answer or not answer as to  
15 all material allegations being denied, and a briefing and  
16 hearing schedule on further consideration for approval of  
17 the settlement.

18 MR. GIBBS: We're happy to do that.

19 MR. DUBBS: Very well, Your Honor.

20 THE COURT: Anything further?

21 Thank you very much.

22 (Whereupon, the proceedings were concluded.)

23 \* \* \*

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5 CERTIFICATE  
6

7 I hereby certify that pursuant to Section 753,  
8 Title 28, United States Code, the foregoing is a true and  
9 correct transcript of the stenographically reported  
10 proceedings held in the above-entitled matter and that the  
11 transcript page format is in conformance with the  
12 regulations of the Judicial Conference of the United States.

13  
14 Date: November 10, 2012  
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16

17 /S/ Sharon A. Seffens 11/10/12  
18 SHARON A. SEFFENS, U.S. COURT REPORTER  
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SHARON SEFFENS, U.S. DISTRICT COURT REPORTER